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IN THE

Supreme Court of the United States

October Term, 1966

No. 1021

ROBERT G. MOOREMAN, Trustee of the Estate of Laing-Garrett Construction Specialties, Inc.,
Petitioner,

vs.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, a corporation,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Questions Presented

I.

When the material facts are not in dispute, may the Court of Appeals reverse the Trial Court on the ground that its findings as to the effect of such facts were induced by an erroneous view of the law?

II.

Can a solvent private corporation, all stockholders, officers and directors consenting, authorize its general manager to use $458.55 of corporate funds for his personal use?

III.

Can a solvent private corporation, intentionally or negligently, clothe its general manager with apparent authority to use $458.55 of corporate funds for his personal use?

Statutes Involved

The statutes cited by petitioner are irrelevant to the issues. Moreover, with the exception of Arizona Revised Statutes, Sec. 10-193, which was cited to the Court of Appeals without argument, these statutes were not urged as involved below, nor was any contention or finding made below that the general manager was guilty of embezzlement when he used the $458.55 in question to pay premiums on his personal policy.

Statement of the Case

The basic facts material to the issues presented are set forth in the opinion of the Court of Appeals, supplemented by this statement concerning the corporation's bankruptcy and petitioner's role as plaintiff.

The corporation was adjudicated bankrupt on August 31, 1961, more than a year after the questioned transaction of August 30, 1960. There was, moreover, no allegation or proof that the corporation was insolvent on August 30, 1960, or, that it was rendered insolvent by the $458.55 transfer. The business continued as a going concern until Laing's unexpected death, 8 months later on April 22, 1961.

Petitioner's role in this litigation is as successor to the corporation's beneficial interest in the insurance policy, and not as a representative of creditors suing for monies had and received.

REASONS FOR DENYING THE WRIT

I. The Court of Appeals in resolving the disputed conclusions to be drawn from the undisputed facts committed no error.

The decision below is a narrow one turning on its own peculiar facts. Moreover, the Court's application to those facts of basic rules of agency law presents no principle or

issue novel to the most ordinary of commercial transactions. Finally, there is no broad public interest presented by the Court's resolution of the disputed conclusions of fact, namely, that the $458.55 premium payment was an authorized use of corporate assets, that in any event the respondent was justified in relying on the general manager's apparent authority, and lastly that there was no debt owed to the corporation by the respondent at the time the policy lapsed.

No amount of unrestrained and unsupported criticism can turn the Court's carefully reasoned and documented opinion into a "farce", so "inexcusable and incomprehensible" as to "require intervention" and "reprimand" by the Supreme Court. Yet petitioner attempts to do so by alleging that the Court of Appeals "created" the "crucial facts" which justify its holding that Laing had apparent, as well as implied, authority on August 30, 1960 to use $458.55 of corporate funds to pay premiums then due on his personal policy. That the petition is frivolous and the grievance without substance is made manifest by comparing petitioner's specifications with the record.

Petitioner claims that "Nothing exists in the record to support any of these findings", namely that (Petition, p. 5):

> * * * Laing had been using company money in the past, to such an extent that "at the time of his death he had overdrawn his salary in the amount of approximately $22,000"; that contrary to express findings by the lower Court, Hilkert the other officer, did know of this, that such could be ascertained from the company books, that Hilkert as secretary did not perform his duties, and by allowing Laing management of the company without control of regular meetings and Minutes, *authorized* Laing to do as he saw fit.

Although the petitioner here paraphrases, and in the last line clearly overstates, the Court's findings, the "crucial" facts as found by the Court, have abundant record support as shown in A to D below.

A. Laing's Prior Use of Corporate Funds—To Pay Personal Premiums

Payment of Laing's premiums with $458.55 of corporate funds on August 30, 1960 was merely a continuation of a method of payment (by corporate check) unquestioned by the corporation for the previous year and a half (Def.'s Exs. "N", p. 83 and "O", p. 87; pp. 156-58, 280-81, 312-14). These were all openly made and disclosed on the corporation's books (p. 313) which were not only available to Hilkert (p. 269) but regularly audited by his associate (pp. 239-41, 347-51). Moreover, the cancelled checks aggregating $1,900.00, were all returned to the corporation together with the bank's monthly statements (pp. 283-84, 331).

B. Corporate Notice of the Questioned August 30, 1960 Transaction

Hilkert had signed the loan note for a policy loan in the amount of $2,491.46 (p. 142). The respondent's loan check on the other hand, was for $1,668.11 (pp. 153-54). In explanation, respondent mailed to the corporation (p. 184-5) its "Statement of Policy Loan Transaction" (Def. Ex. "P", p. 91) which showed the application of $364.80 of the total loan proceeds of $2,491.46 to pay the premium then due on the corporate policy, as well as the application of the questioned $458.55 to pay premiums on Mr. Laing's personal policy numbered 839-63-09s (pp. 176-77).

Hilkert made no protest of the use of $458.55 at that time or after the policy's lapse when it was again called to his attention (pp. 205-212).

C. Laing's Other Uses of Corporate Funds—Also Ascertainable From the Records

Although there was no corporate resolution either for or against Laing's or Hilkert's use of corporate funds for private purposes (pp. 241, 345-6), Hilkert acknowledged that the officers as was "common in practically every corporation," had authority to maintain open accounts (p. 339).

He had such an account (Def. Ex. "A-1", p. 296) and he knew that Laing had one although "I don't know what was reflected through it all the time" (p. 247). The fact is that Laing's account shows in the period from March, 1959 through March, 1961, a debt balance for corporate monies used for personal purposes ranging from $34,000 to approximately $22,000 at his death (Def. Ex. "Z", p. 292; p. 298). While some of this represented "accommodation purchases" for Laing's personal use, much of it was the result of direct "cash disbursements" (identified as "C.D." in the ledger sheets, Def. Exhibit "Z") to Laing from the corporate treasury (pp. 302-03, 308-09). Many of the cash disbursements were substantially greater than $458.55 (p. 304).

Hilkert summed up his position with regard to Laing's use of corporate credit or cash as follows (p. 346):

> Except that if there was anything that I felt was overdoing it, I objected to it * * *. In other words, there was always, we will say, a limit in the tolerance between Mr. Laing and I, and before that, Mr. Laing, Mr. Garrett and I, in how much they could use the company for personal use, using company credit.

This tolerance included, among other things, Mr. Laing's and even Mrs. Laing's use of the corporation's credit for personal airline travel (pp. 252-53, 344-45).

Although Hilkert said that according to the books Laing's account was highly overdrawn (p. 253) and that he was heavily indebted to the corporation (p. 254), petitioner complains that the Court did not offset the debits listed in Exhibit "Z" by the credits listed in plaintiff's Exhibit "11" (p. 319) which would have left a balance due Laing of $1,798.30. Of course, in that case the $458.55 is also offset against Laing's "just demand" against the corporation. In any event, a decision as to the propriety of such an offset was unnecessary to a resolution of the issues before the Court. What was pertinent was the incontestable fact that Laing had authority " * * * to use corporate credit or cash for personal needs, subject only to Hilkert's objection if

Laing were felt to be 'overdoing it'." (Court of Appeals Op., pp. 3-4).

D. Hilkert's Acquiescence in Laing's Management

Laing and Hilkert were the only stockholders (p. 234). They were also the only directors and officers. Laing was President and Hilkert, Secretary-Treasurer (pp. 235-37). Hilkert was frank to say that he did not participate in the normal day-to-day operations of the business, or even in the keeping of the books and records, but confined his activity to giving his opinion as an accountant, if and when consulted (pp. 260-1). He testified that the company was informally run with the common consent of the two owners (p. 271), that minutes were not regularly kept and that he (Hilkert) had no minute book and could find none (pp. 263, 271), that Laing was the general manager (p. 272) and ran the corporation (pp. 237, 269-70).

The District Court had found it to be "undisputed" that Laing was the sole managing agent, and that Hilkert the only other stockholder and director "* * * never took an active part in the operation of the company and his only relation to it, really, was as the corporation's major creditor by reason of due and unpaid salary in the amount of $80,000" (Pet. App., p. vi).

As shown, Laing's use of corporate funds to pay his premiums and for other personal purposes was readily ascertainable from the company's books and other records. The District Court, moreover, traced the whole controversy regarding respondent's acceptance of the $458.55 premium payment to Hilkert's negligence (Judge Foley's letter of January 25, 1965 reproduced in respondent's Appendix). And, as the Court of Appeals put it (Op., p. 5):

> * * * Had he [Hilkert] been performing the duties for which he now claims compensation he certainly would have known [about Laing's prior premium payments, etc.]. But more, knowledge was not essential to authority. Under his arrangement with Laing,

> if Laing's exercise of his general authority was to be kept within bounds, it was Hilkert's obligation to keep informed as to the extent of Laing's borrowings.

Whether Hilkert was negligent or acquiescent, the legal result is the same, namely, that Laing's conduct in the context of this closely held and informally run corporation was chargeable to the corporation (*Arizona Southwest Bank* v. *Odam,* 38 Ariz. 394, 300 Pac. 195 (1931); *Bashford-Burmister Co.* v. *Hammons,* 36 Ariz. 173, 283 Pac. 926 (1930); Restatement (Second), Agency, § 43 (1958); 2 Fletcher, Cyclopedia of Corporations, perm. ed., § 445, p. 345 (1954)).

We respectfully submit that the "crucial facts" which spell out Laing's implied and apparent authority are incontrovertible and that petitioner's many assertions that these facts are "non-existent", taken "from out of the blue" and are "nowhere found in the record" are patently irresponsible.

Petitioner's attempt to cast the issue in terms of an embezzlement is also out of order. There is neither proof nor finding that Laing intended to defraud the corporation, a statutory requisite for embezzlement. Moreover, the determinative finding was that Laing had implied authority to so use the $458.55. In any event, whether or not Laing was guilty of a crime because, as petitioner claims, he did not thereafter debit his account for $458.55 is not something which is chargeable to the respondent. Accordingly, the embezzlement contention is irrelevant to the finding of Laing's apparent authority and of respondent's justified reliance thereon. 2 Fletcher, *op. cit. supra,* § 463; *Glens Falls Indemnity Co.* v. *Palmetto Bank,* 23 F. Supp. 844 (1938), *aff'd* 104 F. 2d 671 (4th Cir. 1939); *Sweet* v. *Lang,* 14 F. 2d 762 (8th Cir. 1926).

Finally, petitioner misconceives what is a basic function of the Court of Appeals, namely, to resolve the disputed conclusions to be drawn from undisputed facts. *Kippen* v.

American Automatic Typewriter Co., 324 F. 2d 742 (9th Cir. 1963). Here, the Court simply found that the District Court's holding was induced by an erroneous application of established principles of corporate and agency law and, moreover, in view of the uncontroverted evidence, was clearly erroneous. *United States* v. *United States Gypsum Co., et al.*, 333 U.S. 364 (1948).

II. There is no conflict with applicable State Law.

There is nothing improper or outside the object of its creation for a close corporation such as this, to authorize its officers to borrow funds for their personal accommodation. Such authorization is one of the most ordinary applications of implied or incidental power.

Yet petitioner asserts that the use of $458.55 in question was an *ultra vires* act void *ab initio*. His theory is that any appropriation of corporation assets to an officer's personal use is beyond the powers authorized by the corporation's charter. He also insists that Laing was guilty of embezzlement when he did not enter the use of the $458.55 in his ledger account of monies borrowed from the corporation, and that this nullifies, on the ground of *ultra vires*, any prior authorization or subsequent corporate acquiescence. Petitioner is unconcerned that respondent cannot be charged with knowledge of any such abuse of Laing's authority, or of misappropriation, even if such were proved. He similarly brushes aside that Hilkert is the one who put Laing in command, the one who clothed him with authority and the one to be charged with such knowledge and acquiescence therein. Cf. *Arizona Southwest Bank* v. *Odam*, 38 Ariz. 394, 300 Pac. 195 (1931); *Higgins* v. *Arizona Sav. and Loan Ass'n*, 85 Ariz. 6, 330 P. 2d 504 (1958); 19 Am. Jur. 2d *Corporations* § 1121 (1965).

Petitioner misapplies the doctrine of *ultra vires* which, in a non-public controversy such as this, has as its basis the protection of the stockholders. Thus, when as here all

stockholders are held to have agreed to an officer's appropriation of corporate funds at a time when the corporation was a going concern,[1] a consenting stockholder cannot later challenge the officer's authority on the theory of *ultra vires*. *Oliver* v. *Safe Deposit and Title Guar. Co.*, 315 Pa. 552, 173 Atl. 281 (1934); *Lake Park Dev. Co. v. Paul Steenberg Const. Co.*, 201 Minn. 396, 276 N.W. 651 (1937); 19 Am Jur. 2d *Corporations* § 969 (1965); note, 83 Pa. L. Rev. 479, 491-92 (1935).

In *Bashford-Burmister Co.* v. *Hammons*, 36 Ariz. 173, 283 Pac. 926 (1930), the Supreme Court of Arizona stated the rule, in a non-public controversy such as this, to be as follows (36 Ariz. at 180-81, 283 Pac. at 928):

> While the stockholders as such are not agents of the corporation and cannot sell or dispose of its property, they are the equitable owners of its assets, and, when they stand by or actively encourage the officers they have selected to act for them to dispose of or handle the corporation's property in a way not permitted under its charter, and thereafter say nothing and do nothing over a long period of time, thereby tacitly ratifying and acquiescing in what was done, they should not be permitted to assert that the action of the directors was *ultra vires and void.* [Citations omitted.]
>
> In *Kent* v. *Quicksilver Mining Co., supra* (reading at page 185 of 78 N.Y.), the court announced this very sound rule:
>
> 'In the application of the doctrine of *ultra vires*, it is to be borne in mind that it has two phases: one where the public is concerned; one where the question is between the corporate body and the stockholders in it, or between it and its stockholders, and third parties dealing with it and through it with them. When the public is concerned to restrain a

[1] There being no proof to the contrary, the solvency of this going concern on August 30, 1960 is presumed. 19 C.J.S. *Corporations* § 1374 (1940); 15A Fletcher *op. cit. supra*, §§ 7362, 7364 (1954).

> corporation within the limit of the power given to it by its charter, an assent by the stockholders to the use of unauthorized power by the corporate body will be of no avail. When it is a question of the right of a stockholder to restrain the corporate body within its express or incidental powers, the stockholder may in many cases be denied, on the ground of his express assent or his intelligent though tacit consent to the corporate action. If there be a departure from statutory direction, which is to be considered merely a breach of trust to be restrained by a stockholder, it is pertinent to consider what has been his conduct in regard thereto. A corporation may do acts which affect the public to its harm, inasmuch as they are *per se* illegal or are *malum prohibitum*. Then no assent of stockholders can validate them. It may do acts not thus illegal, though there is want of power to do them, which affect only the interest of the stockholders. They may be made good by the assent of the stockholders, so that strangers to the stockholders dealing in good faith with the corporation will be protected in a reliance upon those acts.'

And, in specific response to the contention that Arizona should apply the rule of *Central Transportation Co.* v. *Pullman's Palace-Car Co.*, 139 U.S. 24 (1890), even though only private rights were involved, the Court said (36 Ariz. 173, at p. 181):

> * * * This is not the rule generally adopted in the state courts. It is not the rule in this state. [citations omitted]

Fletcher, in his Cyclopedia of the Law of Private Corporations, puts the rule this way (Vol. 7, § 3432 at pp. 592-93 (1964)):

> It is now generally held that unanimous [stockholder] consent is sufficient, even in the case of an actual or prospective gift or diversion of assets to a noncorporate purpose, such as the payment of the debts of officers or an accommodation guaranty, unless creditors are injured thereby, unless the act

> is not only ultra vires but in addition illegal and void. (Citing *Trico Electric Cooperative* v. *Ralston*, 67 Ariz. 358, 196 P. 2d 470 (1948).)

Trico Electric, supra, relied on by petitioner, merely illustrates the rule, as pointed out by the Arizona Supreme Court in *Bashford-Burmister Co.* v. *Hammons, supra*, to be applied when the public is directly concerned. In *Trico*, a corporation chartered to deal in plumbing fixtures, attempted to become a public water utility. Such a transformation, in accordance with the rule of *Central Transportation Co.* v. *Pullman's Palace Car Co.*, 139 U. S. 24, *supra*, was held to be *ultra vires* in the true sense, *i.e.*, beyond powers expressly or impliedly conferred. This rule, to be applied when the public was directly concerned, was also the rule prior to *Hammons* [2]. On the other hand, when private rights only are concerned, Arizona has uniformly applied the *Hammons* rule. See *Leon* v. *Citizens' Bldg. and Loan Ass'n*, 14 Ariz. 294, 127 Pac. 721 (1912) and *Higgins* v. *Arizona Savings and Loan Assn.*, 85 Ariz. 6, 330 P. 2d 504 (1958).

Moreover, petitioner's own authorities support the view that the principles of agency law operate in a situation such as this to estop corporate disavowal of its officers' action. (7 Fletcher *op. cit. supra*, § 3401 (1964). Fletcher accordingly sums up the applicable rule like this: (Vol. 2, § 463, p. 431 (1954)):

> Conceding that a person dealing with a corporation is bound to know whether or not the officer or agent who acts for it is authorized to do so, yet, if

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[2] *Consolidated Nat'l Bank* v. *The Anglo & London Paris Nat'l Bank of San Francisco*, 34 Ariz. 160, 269 Pac. 68 (1928); and *McQueen* v. *First National Bank*, 36 Ariz. 74, 283 Pac. 273 (1929). See generally on the application of *ultra vires* 7 Fletcher *op. cit. supra*, §§ 3406, 3411, 3471, 3495 (1964); 10 Fletcher *op cit. supra*, § 4959 pp. 911-12; Carpenter, Should the Doctrine of Ultra Vires Be Discarded?, 33 Yale L.J. 40 (1923); 19 Am. Jur. 2d, *Corporations* § 963 (1965). See also *Bulger* v. *Colonial House of Flushing, Inc.*, 281 App. Div. 847, 119 N.Y.S. 2d 233 (2d Dep't 1953).

> he is, and the act is within the apparent scope of his authority, the person dealing with him is not chargeable with notice of extrinsic facts making it improper for him to act in the particular case. And, by the weight of authority, this is true although the officer or agent may in fact act fraudulently and for his own purposes and benefit and not for the benefit of the corporation, if there is nothing to charge the persons dealing with him, or relying upon his act, with such misconduct. Likewise, diversion of proceeds by a corporate officer is no defense in an action against the corporation, if the officer had power, actual or apparent, to make the contract.

Petitioner (on pages 8 and 9) simply stopped his quotation from Volume 3 of Fletcher (§ 1109 at pp. 736-37 (1965)) too soon. This continues at pages 737-38 as follows:

> Accordingly, unless corporate officers are given authority, either express or implied, to pay their personal obligations with the funds of the company, it is clear that they may not lawfully do so. * * * such authority may be implied from conduct which indicates that the directors and officers of the company had previous acquiesced in acts of a similar nature, and the corporation may be estopped by its course of conduct and dealings to deny the authority of the officer or agent in the premises, as where it has apparently clothed him with such authority.

Again petitioner in quoting from Fletcher Volume 3 at pages 739-40 omitted the part we have italicized below:

> A corporation has a cause of action against a person who knowingly accepts corporate funds in payment of the individual debt of an officer of the corporation, *unless the corporation validly authorizes such an appropriation of its funds or afterwards ratifies it,* since in such case the person receiving the money and the officers are joint tortfeasors. . . . (p. 739)

Plaintiff sues here, of course, as successor to the corporation's interest and not as a representative of creditors

for monies had and received. As such he stands in the corporation's shoes and that which estops the corporation to rely on *ultra vires,* estops its successor in interest 7 Fletcher *op cit. supra* § 3447, at p. 601 (1964).

III. Even assuming the $458.55 payment to have been *ultra vires*, this would not revive the policy.

While the finding that Laing had authority to use the $458.55 disposed of the case, there are additional insuperable obstacles to petitioner's recovery. For example, even if the $458.55 payment had been a wholly naked diversion, it would at most have been voidable and not void.[3] As such, any avoidance could not retroactively revive the previously lapsed policy. *Joseph* v. *Schatzkin,* 259 N.Y. 241, 181 N.E. 464 (1932).

Moreover, the facts are clear beyond conjecture that the corporation, during Laing's lifetime, had evinced no intention of paying the premium which caused the lapse. It is uncontroverted that despite timely written and oral notification of the lapse and the procedure available to restore the policy, the corporation made no effort to tender payment of the overdue premium until after Laing's death. Thus, if the $458.55 had been included in the August 30, 1960 loan check, which was deposited to the corporate account, the policy would still have lapsed. Or, if it is assumed that the $458.55 would not have been withdrawn in the first instance from the corporate policy, the policy's automatic premium loan agreement (the previous premium having been paid by automatic premium loan) would have precluded its use to pay the premium in question (it prohibited two consecutive such payments).

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[3] 19 C.J.S. *Corporations* §§ 965, 968 (1940); 7 Fletcher *op. cit. supra,* § 3413 (1964); *Karns* v. *Industrial Comm. of Ariz.,* 50 Ariz. 466, 73 P. 2d 104 (1937); *Garden Dev. Co.* v. *Warren Ranch,* 35 Ariz. 254, 276 Pac. 839 (1929); *Zeckendorf* v. *Steinfeld,* 12 Ariz. 245, 100 Pac. 784 (1909).

In sum, the legal consequences of even a naked diversion could not put petitioner in a superior position to that in which he would have been in had there been no diversion. As indicated, because the Court found that there was no diversion, the legal tenability of petitioner's other theories were not reviewed on the appeal.

Conclusion

As is evident from its opinion, the Court of Appeals applied universally accepted principles of agency law to the undisputed facts and concluded that the general manager of this close, informally run corporation had both actual and apparent authority to use the $458.55 for his personal accommodation.

The transaction in question was a humble everyday business transaction and the Court's disposition of it fully conforms to the standards of the business community, standards which are best expressed by this Court's classic resolution in a somewhat similar apparent authority situation. *People's Bank* v. *National Bank,* 101 U.S. 181 (1879):

> * * * where one of two innocent parties must suffer by the wrongful act of a third, he who gave the power to do the wrong must bear the burden of the circumstances. (101 U.S. 181, 183).

Contrary to petitioner's unsupported assertions, the Court of Appeals created no facts, nor is its decision contrary to applicable state law. Petitioner's call for a review

to reprimand the Court is entirely out of order, and should be denied.

Respectfully submitted,

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APPENDIX

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ROGER T. FOLEY

Judge's Chambers
Las Vegas, Nevada
P. O. Box 1628
January 25, 1965

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ATTENTION: Miss Beverly J. McConnell:

In re: Mooreman v. Mutual of New York Life Insurance Company, No. 4359 Phx.

Dear Miss McConnell:

Your proposed amendments and additions to Findings of Fact and Conclusions of Law just recently received.

The purpose of this letter is to ascertain how you arrived at the sum of $76,697.69 as the amount in which judgment should be entered.

First let me call your attention to Item 1 on page 5, line 27 of the Opinion, Findings of Fact and Conclusions of Law which I caused to be filed December 16, 1964. Through a typographical error, Item 1 was listed as $346.80—the correct amount is $364.80.

In my judgment, the unpaid loan balance was $2491.46 not $2951 as set forth in your proposed additional Finding No. 16. I have added to that $2491.46 the sum of $351.31, the amount of the so-called "settlement check," which total

sum is $2842.77; and subtracting from $80,000 the sum of $2842.77, gives us the amount of $77,157.23, which, in my opinion, is the correct amount of the judgment.

Please inform me how you arrived at the figure $76,697.69.

In addition to the authority which I have cited in my Findings of Fact of December 16, 1964, the case of *Arizona Eastern R. Company* v. *Head,* 224 P. 1057, I am following the statement contained in 47 C.J.S. § 41, page 52, to the effect that the amount of interest rests in the sound discretion of the Court. I believe such is the fact in this case.

In view of the circumstances out of which this controversy arose, namely, the improper conduct of the president and general manager of the Laing Corporation, C. W. Laing, coupled with the negligence of the only other stockholder, Mr. E. J. Hilkert, the Insurance Company should not be further penalized by requirement to pay interest from the date of Mr. Laing's death.

You may prepare a form of judgment in the sum of $77,157.23, with interest at the rate of 6% per annum from the date of the rendition of said judgment until paid. I am inclined to enter judgment in that amount but will carefully consider your computation in arriving at the sum of $76,697.69.

Very truly yours,

ROGER T. FOLEY,
U. S. Senior District Judge

cc: Evans, Kitchel & Jenckes,
Att: Mr. Ralph J. Lester